

Laura Eytan



June 15, 2022

Via Email only

Anthony Daysog
Project Manager
SF BCDC, Bay Area Metro Center
375 Beale Street, Suite 510
San Francisco, CA 94105

RE: Administrative Listing for June 16, 2022

Dear Mr. Daysog,

I have reviewed the Commission's Agenda Item #7, BCDC Permit Application No. M2021.033.00, filed on April 1, 2021 by Joshua and Nicole Russell. The Russells seek a permit to build a sizeable shed and fence on my property, rather than on their own property.

I urge the Commission to deny the Russells' Application for the following reasons, as supported by the facts that follow.

Please forward my views to the Commissioners and Alternates for consideration prior to their determination of the appropriate action to take on this pending Permit Application.

PRELIMINARY STATEMENT

As I reviewed staff's analysis of this Application, it seemed to me that perhaps staff did not understand or was not sufficiently aware of the facts underlying the Russells' permit application. I had the distinct impression that staff thought that I, rather than the Russells, had started a fight about the boundary between our lots.

Imagine that you are sitting in a lawn chair in your yard reading the newspaper. You have owned your home and yard for more than 50 years. Your next door neighbor, with whom you have been friends for several years, appears. He tells you that he owns the property you are sitting on. In fact, he says he owns half of your yard. He demands that you remove yourself and your belongings from "his" property.

Taken aback, you decline his demands and his claim, and explain that he does not own any part of your property. He becomes belligerent. The next thing you know, several local police officers appear in your yard. They tell you that your neighbor says he owns your property and orders you to gather your belongings, go onto your porch, and do not go onto your property or you will be arrested for trespassing. The police refuse to listen to your side of the story and accuse you of being belligerent. Meanwhile, they tell your neighbor that if you use your property again, to call them and they will arrest you.

This is essentially what the Russells' did to me on August 6, and August 7, 2021.¹ This is how they started their pending boundary dispute. They have continued to badger, bully, physically intimidate, trespass, remove my No Trespassing signs, and damage my property and belongings for nearly a year and a half. I am a 71 year old single resident living alone in Benicia next door to the Russells. The Russells' relentless "bad neighbor" behavior has taken a huge toll on me physically, medically, emotionally and mentally.

The matter ultimately wound up in Solano County Superior Court, FCS057493, before Judge Daniel Healy. The first hearing was conducted on April 1, 2022. See attached Order. The next hearing is scheduled for July 15, 2022.

I certify under the penalty of perjury that to the best of my knowledge and recollection the factual statements I make in this document are correct.

LEGAL ARGUMENT

1. Failure to Demonstrate "Adequate legal interest."

The Russells failed to demonstrate that they have "adequate legal interest," as specifically required in the BCDC Application Form and Commission Regulations Appendix F, in the property upon which they intend to build a fence and shed.

A. Relevant Facts

The Russells did not submit a copy of any of the documents required by the BCDC Application and Commission Regulations Appendix F to obtain approval of a BCDC permit application. I have reproduced relevant parts of the Application Form and Regulations in Exhibit A.

¹ The Russells called the police to their property more than a dozen times after August 7, 2021. I was compelled to file a Citizen's Complaint for Police Misconduct. The Benicia City Manager ultimately confirmed in a letter to me that the Russells' calls were all civil in nature, and that the police only have the authority to act on criminal matters. The police should not have acted upon the Russells' calls.

What, if any, “documentation” did the Russells provide to demonstrate their “adequate legal interest?”

I have reviewed the Russells’ submission to the Commission, provided at my request by BCDC staff, which includes 01 BCDC Application (in which certain required information appears to have been omitted), 02 Elevation certification, 03 Fence estimate, 04 Plat map, 05 Plat map, 06 Shed estimate, 07 Site pictures, 08 Site plan, 09 Site survey, and 10 Tax bill.

Conspicuously absent are any of the required documents demonstrating a fee interest or an easement or a lease permitting the Russells to undertake activities on any specific property, let alone on the part of my property they claim they own. Nor is there a property map, a recently issued title report or grant deed that include a map or metes and bounds description of the property they claim to own, and specifically upon which they intend to build a sizeable fence and shed.

Nor does the application include the required “vicinity map.” While the Russells attached document 08 Site Plan, apparently to fulfill the requirement to submit a “project site plan,” it fails to “show exactly the nature, scope and location of the proposed work.” Nor have the Russells submitted documents that show the specific locations of existing improvements (e.g. their house and their fence gates, my house and steps, my retaining wall) and the locations where they intend to build their sizeable shed and fence.²

In light of the Russells’ failure to demonstrate the “adequate legal interest” required by law, the Commission must deny approval of their Application.³

² The Russells’ submissions do not even support their desire to build on the property they have owned for 15 years. It is noteworthy that they omitted all information showing that they actually intend to build their fence and shed on property that my family has owned, occupied, maintained and used for more than 50 years.

It is unconscionable that the Russells also omitted any information pertaining to the lawsuit pending before Judge Daniel Healy, in Solano County Superior Court. They filed their lawsuit against me, regarding “the extent of [their] property boundary,” on or about December 7, 2021. This would include photographs as well as an illustration of the “extent” of their boundary established by the location of the 70 year old picket fence which they unilaterally removed on or about February 16, 2021. Until then, the Russells had recognized and used that fence as the boundary of their property for the entire time they lived next door to me (14 years).

³ It would be “arbitrary and capricious” and an “abuse of discretion” for the Commission to approve an application based on an evidentiary record, such as this, that does not include any of the documents required by the Commission’s regulations.

2. Administrative Agency Deference to the California Judiciary

Commission approval of BCDC applications for permits to build upon property within the BCDC's jurisdiction is premised on the applicant(s) having actual legal title to that property. Commission Regulations Appendix F makes this abundantly clear by listing the specific documents, including specific contents and notations, that must be submitted by an applicant.

In the case of a pending boundary dispute, the Commission's responsibility and authority is only to review an application to verify that the applicant has submitted each of the documents specified in the Commission's regulations, including the specifically required content and notations of each of those documents.

The Commission is neither called upon nor imbued with the legal authority to resolve an underlying boundary dispute. That is the exclusive domain of the California courts. The Commission, like all administrative agencies, must defer to the factual findings and rulings of the Courts.

Staff recognizes that a lawsuit has been filed "regarding the extent of the [Russells'] property boundary." If the Commission were to approve the Russells' application during the pendency of this lawsuit, it would be tantamount to a legal determination that the Russells already possess what is being adjudicated in the Solano County Superior Court. This would be an illegal usurpation of the authority of the Court.⁴

A. Relevant Facts

On or about December 7, 2021, the Russells filed a civil harassment lawsuit against me regarding "the extent of [their] property boundary." BCDC Staff is aware of this. See Agenda Item #7, par. 2, lines 6-7. They filed their lawsuit in the Solano County Superior Court. It is pending before Judge Daniel Healy. Another hearing is scheduled for July 15, 2022.

The filing of this lawsuit, standing alone, is proof that the Russells do not have title to the part of my property upon which they intend to build their fence and shed.

In their lawsuit, the Russells falsely accuse me of harassing them by using part of the property that my family has owned, occupied, maintained and used for more than 50 years. They intentionally misrepresented that they own that part of my property.

⁴If the Commission were to approve the Russells' application during the pendency of their current lawsuit, or any subsequently filed lawsuits in this matter, it could lead to inconsistent factual findings and rulings. This would then require additional governmental resources to rectify the situation. In short, approval at this time would lead to a significant waste of agency and court resources.

That “part of the property” happens to be the property upon which the Russells intend, with BCDC approval, to build a sizeable fence and shed. How was Staff to recognize this? The Russells intentionally omitted documents by which Staff could determine this, so I suspect they could not.

The first hearing on the Russells’ lawsuit took place on April 1, 2022. The Russells wanted Judge Healy to rule that I had harassed them and to enter a permanent restraining order against me to bar me from using that part of my property. Judge Healy did not do so. Instead, he ruled that the Russells must establish ownership of the property, if they can, in a separate “quiet title” action in Solano County Superior Court, or through mediation or settlement discussions with me. He signed an Order containing his ruling at the end of the hearing. See attached Order.

As far as I know, the Russells have done nothing to fulfill Judge Healy’s Order.

On the other hand, after Judge Healy’s ruling, I emailed the Russells twice in an attempt to open settlement discussions. The Russells have not responded to my emails. In fact, before the Russells began calling the police, I appealed to them several times to “spare our friendship” by amicably agreeing upon a different boundary. They rebuffed my efforts.

3. “Special Conditions to Hold the Commission Harmless”

Staff’s Tentative Recommendation includes a “special condition” requiring the Russells’ to hold the Commission harmless against claims that it “inappropriately authorized ... activities on property that they do not own.”

I believe that recommending the inclusion of this “hold harmless” clause is at least a strong indication that Staff is not sure that the Russells have fulfilled all of the statutory and regulatory requirements for approval of their application. I interpret it, however, as a clear admission that Staff does not believe they have fulfilled those requirements. Hedging their bets, so to speak.

Including a “hold harmless” clause abnegates the Commission’s statutory duty to withhold approval of applications unless all statutory and regulatory requirements are met. More to the point, it would allow the Commission to act illegally provided it is “held harmless” for doing so.

Surely it would be more reasonable to simply deny approval at this time and permit the Russells to cure the deficiencies of their application or file a new application if they ultimately prevail in the necessary civil action to establish their ownership.

4. Condoning the Russells' Past and Continuing Unnecessary and Inappropriate Conduct

As I said in my Preliminary Statement, the Russells' relentless "bad neighbor" conduct since mid-February, 2021, has taken a huge toll on me physically, medically, emotionally and mentally. I can, but will not, provide examples and supporting documentation of their seemingly countless harassing actions. I will not for two reasons. First, recounting these events would be like reliving them, and I have no desire to do that. Second, although several attorneys have recommended that I file an Elder Abuse Restraining Order against the Russells, I do not have the stomach for it. More simply put, I always prefer to take the high road.

That said, I would like to point out that the Russells have known from the time they started this dispute that they could only acquire legal ownership of property beyond the preexisting boundary established by the 70 year old picket fence they removed. I told them in an email; my prior attorney told them when he visited my property as well as in a subsequent email. In addition, I have appealed to them on numerous occasions to explain what it is they want in order to amicably settle their dispute. As I recently wrote them, their desire to own part of my property seems to be central to their happiness. I, on the other hand, am ready to move on to more important and satisfying endeavors. All to no avail.

Rather than simply filing the required civil action to press their claim, or engaging in settlement discussions with me, the Russells have chosen to continue harassing me. They have unnecessarily dragged me into three forums in which I have had to defend myself against their false accusations and intentional misrepresentations that they own part of my property.

First, they called the Benicia Police Department more than a dozen times. Each time they falsely accused me of trespass and other illegal conduct, and intentionally misrepresented the extent of the property they own. To my knowledge, the last time they called the police was a few weeks after they filed their Civil Harassment lawsuit against me (December 7, 2021).

Calling the police was not enough to force me to give them what they wanted, so they filed their Civil Harassment lawsuit against me, falsely accusing me of harassing them and intentionally misrepresenting ownership of part of my property.

Now I have had to defend against their intentional misrepresentations to the BCDC that they own part of my property and should be permitted to build a sizeable fence and shed on it.

My point is this: If the Commission approves the Russells' application, it will effectively condone the past year and a half of their refusing to do the right thing – file a civil action or engage in settlement discussions with me – while continuing to do the wrong thing – continue to harass me.

I urge the Commission, therefore, to deny approval of the Russells' pending application.

Thank you for considering my concerns.

Sincerely,

Laura Eytan

EXHIBIT A

Excerpts from BCDC Application Form and Commission Regulations Appendix F

BCDC Application Form, Box 1 (d) requires applicants to:

"Provide documentation of property interests, such as a copy of a grant deed, lease or easement, . . . , that demonstrates that the owner or applicant has adequate legal interest in the property to undertake the proposed project. See Commission regulations Appendix F for complete details."

"Commission regulations Appendix F" specifically describe the required "documentation" to demonstrate "adequate legal interest" as:

"adequate legal interest must be one of the following:

A fee interest ...

A sufficient easement...

A leasehold...

An enforceable option ...

The authority and commitment to acquire the property by eminent domain."

Appendix F continues:

"To establish that the applicant or co-applicant has adequate legal interest . . . it is necessary for the application to include

- A property map and

- either a recently issued title report, or a copy of a grant deed (both of which must include a map and a metes and bounds description)

Appendix F continues:

“The property map (or maps) must either be a copy of an official property map obtained from a county assessor’s office annotated as follows or a specially prepared map showing the following:

- All property lines, easement lines, and current assessor parcel numbers for the property on which the project will occur.
- A metes and bounds description for all property lines and easement lines.
- A north arrow, graphic scale, project name, the edge of the Commission’s Bay or certain waterway jurisdiction, an identification of the exhibit as a property map, the date of the plan’s preparation and the name, address, and telephone of the person who prepared or annotated the map.

Every application must include a vicinity map and a project site plan.

- The vicinity map must . . . shows the project site in relation to the shoreline, ...
- The project site plan must details of the proposed project to be adequately illustrated. ... show exactly the nature, scope and location of the proposed work and clearly distinguish between existing and proposed conditions....must include all of the following elements:
 - The edge of the Commission’s Bay or certain waterway jurisdiction.
 - A line 100 feet inland from the edge of the Commission’s Bay jurisdiction.
 - Any salt ponds...
 - Property lines.
 - Location and names of nearby roads, streets or highways.
 - All major utilities.
 - Existing control points, important geographic, topographic or physical features, and all major fixed objects and structures on the project.
 - Existing and proposed topography, ...
 - Existing and proposed improvements
 - Existing and proposed building elevations.”

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO 311-MS

Petitioner: Russell, Joshua Case No: FCS057492
Respondent: Fytan, Laura Date: 4-1-22
Judge/Comm: Healy
Reporter: CR
Clerk: D. Rivas

MINUTES - DOMESTIC VIOLENCE / CIVIL HARASSMENT / ELDER ABUSE / WORKPLACE VIOLENCE
RESTRAINING ORDER

Petitioner ☐ with ☐ thru counsel: Present ☒ in pro per. Interpreter _____
Respondent ☒ with ☐ thru counsel: Dennis Phillips ☐ in pro per. Interpreter _____
On Calendar for: ☐ OSC ☐ Court Trial ☐ Other: _____

☒ Case called ☐ No appearance ☐ No proof of service ☐ Off calendar ☐ Reissue & re-serve ☐ OST _____ days for service
☒ Continued to 7/15/22 at 1:30 in Dept. 2 ☐ Pending petitioner's/respondent's criminal matter.
☒ All (temporary) orders remain in full force and effect. ☐ Parties directed to Calendaring Division for setting.
☐ Restraining orders dismissed at request of ☐ Petitioner ☐ Respondent ☐ Court. ☐ All temporary orders are dissolved.
☒ Petitioner ☒ Respondent ☐ Interpreter(s) Nicole Russell, duly sworn.
☐ Resp. to file Answer, have Pet. served and file a Proof of Service no later than _____. If not filed, Resp.'s default will be taken.
☐ No objection to the restraining orders. ☐ Not an admission. ☐ By stipulation with no court findings.
☐ Restraining orders ☐ granted - see below. ☐ denied ☐ without prejudice. ☐ Mutual restraining orders granted.

PROTECTED PERSON: Joshua Russell RESTRAINED PERSON: Laura Fytan
OTHERS PROTECTED: _____

☐ Personal Conduct Orders: The restrained person shall not do the following things to the protected person(s) listed above:
☐ Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements.
☐ Physically abuse, financially abuse or intimidate. (Elder Abuse)
☐ Contact (either directly or indirectly), by telephone, or send messages, or mail, or e-mail, or any electronic means.
☐ Except for brief, peaceful contact for court ordered visitation of children unless prohibited by a criminal protective order.
☐ Except for peaceful written contact through a process server or other for legal papers related to a court case.
☐ Shall not attempt to obtain address or location of protected persons, or family/caretakers/guardians.
☐ Stay Away Order: The restrained person must stay at least _____ yards/feet away from
☐ Protected person ☐ Other(s) protected ☐ Children's school or child care ☐ Home ☐ Job ☐ Car ☐ School
☐ Other (specify): _____
☐ Except for brief, peaceful contact for court ordered visitation of children unless prohibited by a criminal protective order.
☐ Move Out Order: The restrained person must move out immediately from (address) _____
☐ No Guns or Other Firearms: The restrained person cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get a gun or firearm or ammunition.
☐ Turn in or Sell Guns or Firearms or ammunition: The restrained person:
• Must sell to a licensed gun dealer or turn into police any guns or firearms or ammunition that he or she has or controls. This must be done within 24 hours of receiving this order. But if the restrained person was at the hearing for this order, it must be done within 24 hours of the hearing.
• Must bring a receipt to the court within 48 hours of receiving this order, to prove that guns or firearms or ammunition have been turned in or sold. (DV-800 or CH-145 or EA-145 or WV-145)
☐ Record Unlawful Communication: The protected person has the right to record communications made by the restrained person that violate the Judge's orders.
☐ Batterer Intervention Program: _____
☐ Animals: Possession and Stay-Away Order: The protected party is given sole possession, care, and control of the animal(s): _____ and must stay at least _____ yards/feet away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm or otherwise dispose of the listed animals.
☒ Other orders: Parties present their arguments to the court. The court listens to audio from Petitioner's ~~home~~ ~~phone~~. The court continues the matter to see if the Title has been addressed. Parties may seek mediator if parties cannot agree on any one to inform the court.
☐ The restrained person shall pick up personal belongings on _____ at _____
☐ 3rd party or civil standby officer ☐ may ☐ shall, be present.
☐ These orders shall remain in full force and effect for a period of: ☐ one year ☐ two years ☐ three years ☐ five years
☐ permanent ☐ other _____ ☐ expiring at 12:00 midnight on _____
☒ SLAC/Court ☐ Petitioner ☐ Respondent shall prepare the Order After Hearing. (DV-130 or CH-130 or EA-130 or WV-130) or Order on Reissuance (DV-116 or CH-116 or EA-116 or WV-116).
☐ No fee to notify restrained person: If local law enforcement can serve this order, they will do it for free.
☐ No further service required.
☐ This case is consolidated with case # _____ Lead case: _____
All future filings are to be in the lead case.

DATE: February 9, 2022

TO: San Francisco Board of Supervisors, sitting as the Transportation Authority Board
and as the Treasure Island Mobility Management Agency Board;
Clerk of the San Francisco County Transportation Authority (SFCTA)

FROM: Treasure Island Organizing Committee

RE: **Objection to Treasure Island Proposed Toll Policy**

The Treasure Island toll proposal before you violates the terms of the City's 2014 Agreement with the State Lands Commission (SLC), is in conflict with the Final Environmental Impact Report (FEIR) submitted by the City and County of San Francisco (City), and violates the SF Bay Conservation & Development Commission's (BCDC) permit that is based on the findings in the FEIR. The toll proposal also does not provide evidence to support required findings under AB 981, which states that the congestion management plan shall be based on an analysis that explains the specific benefits that are received by those paying the toll.

The Treasure Island Development Authority (TIDA) and the City are, according to the 2014 Agreement with SLC, acting as a Trustee of State Public Trust Lands. The City's role as Trustee is precisely the reason that the SF Board of Supervisors must reject the toll proposal and direct TIMMA staff to reconsider its approach to congestion management.

The Development Agreement Prohibits Charging a Toll to Island Visitors

Residential development on the former tidelands was allowed by a settlement agreement between the State Lands Commission and TIDA. In conjunction with this Agreement, the SF Board of Supervisors adopted the [Final EIR for the Treasure Island Master Plan](#) on April 11, 2011. The FEIR approved construction of 8,000 new residential units, 500 hotel rooms, and more than 700,000 square feet of other development. The FEIR anticipated that development would increase transportation demands and includes a Transportation Demand Management Plan to address the anticipated increase. But consistent with the importance and condition of maintaining free public access to the shoreline of Treasure Island and the vistas of Yerba Buena Island, the plan clearly and unambiguously guarantees that "**Visitors** to the Islands would not be charged a congestion pricing fee" [\[FEIR, page IV.E.45\]](#).

The 2014 Agreement between the SLC and TIDA explicitly states that San Francisco received clear title to allow residential development in **exchange** for commitments to **enhance** public access to the State's public trust lands. Key recitals in the Agreement further clarify this point:

the island presents an extraordinary opportunity to promote and enhance Public Trust values

(ii) Certain filled tidelands on Treasure Island are useful for ...a pedestrian and bicycle corridor around the shoreline of the island linked with a major open space and recreational park in the northern and eastern portions of the island; a proposed ferry terminal and plaza, a marina, and other public waterfront amenities; a major visitor-serving commercial core including retail and hospitality uses connecting the historic buildings, the ferry terminal and the waterfront; and other public ways that will provide waterfront ac-

cess and enhance water views from the island. [\[TRUST EXCHANGE AGREEMENT FOR TREASURE ISLAND AND YERBA BUENA ISLAND: Page 3\]](#)

... to allow the Public Trust Lands to be used to the greatest benefit of the people of this State.

the Development Plan ...will result in the improvement or enhancement of the Public Trust Lands for Public Trust uses such as open space, public access, water-related recreation, visitor serving facilities, wildlife habitat, circulation to and along the waterfront or similar trust-consistent uses. The Development Plan includes a transportation plan that provides public street access to all of the Public Trust Lands. This Agreement includes provisions to ensure that development of the TIDA Property includes adequate access from the public streets to the Public Trust Lands, including public roadway access along the western shoreline of Treasure Island, as required by the Exchange Act.

The exchange authorized by this Agreement will substantially benefit the Trust and will not result in any interference with the uses and purposes of the Trust. [\[TRUST EXCHANGE AGREEMENT FOR TREASURE ISLAND AND YERBA BUENA ISLAND: Page5\]](#)

Furthermore, [AB 981 Section 1967.6](#) states:

The transportation program shall ensure that public access to waterfront, recreational, and open-space areas on Treasure Island is sufficient to support public trust activities by ensuring all of the following:... (b) Program elements shall not interfere with the provision of public access to public trust lands consistent with the beneficial use of those lands, including, but not limited to, roadway access to serve the public along the western shoreline of Treasure Island.

The Transportation Plan also included a commitment for enhanced bus service and a new ferry terminal, and *the plan proposed that it be funded through a toll that would be applied to the new development at peak hours.* This is the legal and regulatory framework within which the City was granted the right to proceed.

The Proposed Toll Deviates From Peak-Hour Commuters To All Visitors

As TIMMA began to look at the transportation plan in more detail, it became clear that even with congestion, most of the trips would still occur by car. It also became clear that providing the funding for expanded ferry and bus service would be more expensive than the commitments made by the developer in their agreements. So in July 2016 TIMMA staff turned to ALL VISITORS to the island—including those visiting tidelands for recreation, and those traveling at non-congested times—to bridge their funding gap. This decision falls outside of the legal and regula-

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tory framework within which the City was granted the right to proceed. See [TIMMA Committee Meeting](#) [Item 5, 6:00) and [TIMMA Board Meeting](#) [13:00].

Despite repeated requests, TIMMA has not provided a detailed budget on the cost of the new transportation services—particularly the new ferry service—or on who pays and who benefits. It is clear from the City’s own traffic studies, however, that the ferry is as costly as it is ineffective in addressing congestion. In the City’s most optimistic projections, by 2030 the ferry would only carry 2,800 of the 72,000 daily trips generated on the island [\[2019 Treasure Island Demand Model Analysis Report page 43\]](#). To be clear: the proposal before the Board is a request for the City to force visitors to the island to pay for a ferry service they do not use and that it is projected will be wholly ineffective in addressing congestion, which violates the intent of [AB981 Section 1967.5\(b\)\(1\)](#):

Prior to imposing the initial congestion pricing fees, the board of supervisors and the transportation authority shall each make a finding of fact by a two-thirds majority vote that the congestion pricing fees have a relationship or benefit to the motor vehicle drivers who are paying the fee.

BCDC Advised TIMMA That Visitor Tolls Cannot Be Imposed Unless BCDC Grants A New or Amended Permit

TIMMA did not notify the BCDC or the State Lands Commission of their intent to propose a broad and hefty toll as their congestion management solution. The BCDC was only recently informed of TIMMA’s intent to both charge visitors and to expand the toll beyond the specific scope of congestion management times and locations defined in the FEIR. Upon learning the details of TIMMA’s plan, the BCDC informed TIMMA Deputy Director of Planning on November 15, 2022:

In issuing [BCDC Permit No. 2016.005.00 on September 19, 2016, to Treasure Island Development Authority, Treasure Island Community Development, LLC, and Treasure Island Series 1, LLC, to authorize the phased redevelopment of the islands]..., the Commission relied upon application materials, including the Final Environmental Impact Report (FEIR) for the proposed redevelopment project, which did not describe a toll to non-resident visitors. If information regarding the proposed toll had been appropriately included within the FEIR or BCDC permit application materials, the Commission would have evaluated such proposal in relation to applicable Bay Plan policies regarding public access.

The letter goes on to note:

While BCDC staff acknowledges that various provisions of AB 981 (Leno), the Treasure Island Transportation Management Act, grants the transportation management agency (as defined) the “exclusive power” to impose transportation-related revenue measures on

Treasure Island as part of a transportation program (as defined), we do not believe that AB 981 preempts or otherwise conflicts with BCDC's statutory authority to require a permit for substantial changes within the agency's jurisdiction which may adversely affect public access – especially public access required as part of a BCDC permit, such is the case for Permit No. 2016.005.00. (See Government Code § 66632(a); see also 14 CCR § 10125(b)(4).) In other words, we believe a BCDC permit (or permit amendment) is required for implementation of the proposed congestion management program on the basis that the program may affect public access required under Permit No. 2016.005.00. [See Attached]

TIMMA did not reconsider its approach after receiving this letter by the state agency with jurisdiction over this matter. Instead, on January 25, 2022, the TIMMA Committee unanimously voted to authorize a vote on the toll proposal by the full TIMMA board.

The Proposed Toll Technically Cannot Currently be Implemented And Fails to Meet Principles of Fairness and Equity

The current toll proposal is an attempt to bridge an economic gap with only a nod to equity issues. The proposal is not only decoupled from regulatory requirements, it is decoupled from any ability to technically account for the variables required to justify the plan.

TIMMA is proposing a multi-variable dynamic tolling solution that will account for changes in prices based on time of day as well as the economic status of a car's owner. This is a central part of TIMMA's effort to relieve residents and lower income citizens from the burden of the toll and to meet their mandate of social and economic justice. However, CalTrans, which administers the FasTrak system TIMMA staff said it would use for this purpose, has yet to develop a program that can take individual accounts and apply the multitude of tiered charges based on the income of a driver, let alone test that system — and CalTrans has no clear plans or schedule to do so. TIMMA's staff response to this important barrier was simply that TIMMA planned to move forward and develop its own software to do it without CalTrans.. How the City plans to implement a solution beyond the capabilities of CalTrans – the agency with the most expertise in the State on electronic toll collection – is an important question to answer.

The toll proposal will have a broad negative economic impact on the island's economically disadvantaged community, and East Bay visitors will unfairly be charged a disproportionately high toll to access the island.

TIMMA, after strong protests from lower income residents, included a toll waiver for residents who have lived on the island since 2019. TIMMA's position is that the waiver satisfies part of their social justice mandate, but residents are still strongly opposed to the toll. The reason is that the toll impacts not only the residents, but their friends, family, those they rely on for services and the entire island economy. TIMMA has no clear sense of the scope of their proposal, precisely because the economic analysis required by AB 981 has not been performed, despite repeated calls for such a study by island's businesses and residents. Local businesses are already

feeling pressure from customers and vendors about the toll as they are worried about paying the toll or absorbing costs through increased pricing.

Finally, TIMMA is proposing that East Bay visitors pay nearly double the toll of SF-based visitors. Under the current plan, a visitor from the East Bay will pay a \$7 toll in Oakland (which already includes a congestion management fee), a \$5 toll to enter TI, and a \$5 toll to exit. The East Bay visitor will pay \$17 in tolls while the SF visitor will pay \$10 in tolls, although the primary point of congestion will be between SF and TI. The discrepancy is worse during off-peak hours, as the East Bay visitor will pay \$13 in tolls while the SF visitor will pay \$5. The current plan distributes the burden of cost disproportionately to East Bay visitors and focusses the highest costs on the group that is forecast to have the least impact, according the FEIR, on island traffic.

The TIOC Urges SFCTA to Reject This Toll Proposal and Send it Back to the Drawing Board

It is clear to those that have been working closely with TIMMA that the proposal before the Board does not comply with the 2014 Agreement with the SLC, is inconsistent with the City's mandated role as Trustee of State Public Trust Lands, is not based on the type of rigorous economic impact reports that such significant proposals demand, does not align with available solutions to realize the plan. We strongly urge the Board of Supervisors to ask TIMMA to revisit their approach to ensure that state laws, regulations, and basic public review requirements are met before presenting a plan for a vote.

Sincerely,

Treasure Island Organizing Committee

--- Since 2017, The TIOC is a grassroots community organization of Residents, Businesses and Non-Profits that are dedicated representing the needs of the Treasure Island and Yerba Buena Island Community